

# **PPM 320**

## **MEDIATION & APPEAL PROVISIONS**

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### **PURPOSE**

**Vocational Rehabilitation (VR)** endeavors to address issues of concern to each VR **consumer** fairly, fully, in as timely a manner as possible, and with the least possible disruption of the consumer's vocational rehabilitation progress. The provisions described in this chapter have been developed and implemented to assure that an **applicant** or **eligible individual** who is dissatisfied with any determination made by VR affecting the provision of his or her **vocational rehabilitation (VR) services** has access to means by which the determination can be disputed and reviewed in a timely manner.

[AUTHORITY: Federal regulations, 34 CFR 361.57(a)]

### **POLICIES AND PROCEDURES**

#### **320-01. Consumer-Counselor Resolution of Disagreements and Disputes**

Every consumer is encouraged to bring concerns of whatever nature regarding the VR services received to the attention of his or her **VR Counselor (VRC)** for discussion. It is the professional obligation of the VR Counselor to advise and advocate for VR consumers, and to apply VR policy consistently with respect to every consumer served. Frank and open discussion of concerns is part of the vocational rehabilitation **counseling and guidance services** provided by the counselor, is

necessary to maintain effective consumer-counselor communication throughout the consumer's vocational rehabilitation program, and can frequently resolve concerns without formal and lengthy appeal proceedings. It is to be emphasized, however, that consumer-counselor discussion of a consumer's concern cannot be required as a pre-condition for requesting and initiating a formal appeal. The consumer or the [consumer's representative](#) may initiate a request for formal appeal proceedings at any time, with or without prior discussion of the issues.

[AUTHORITY: Federal regulations, 34 CFR 361.48(c); 361.57(c)]

## **320-02. Informal Supervisory Review**

The [Area Supervisor](#) is the VR Counselor's immediate manager and is responsible for supervising the counselor and reviewing the counselor's decisions and work. If the consumer or consumer's representative does not choose to pursue resolution of a disputed determination or action through counseling and guidance, or if counseling and guidance fails to resolve the matter to the consumer's or representative's satisfaction, the consumer may also request an informal supervisory review.

### **1. Requests for an Informal Supervisory Review**

An applicant or eligible consumer may request and obtain an informal supervisory review by indicating their desire for a review to the local VR office. The request may be communicated in writing or orally.

### **2. Scheduling and Conducting the Review**

If the consumer has requested an informal supervisory review, the Area Supervisor, or a designee having supervisory or managerial authority over the VR Counselor, must schedule and conduct the review as soon as possible following the request of the consumer or consumer's representative. No request made for an informal supervisory review can be declined. The review must be conducted with the presence and active participation of the consumer and, if applicable, the consumer's

representative **not later than five business days following the request for review**, unless an extension is requested and agreed to. The informal supervisory review must occur **after completion and submission of the Request for Review form required to initiate formal appeal proceedings**, unless the consumer makes an informed choice not to pursue formal remedies, but, in all cases, must occur prior to any mediation or impartial due process hearing.

### 3. Review Decisions and Notifications

After considering the consumer's concerns and applying VR policy to the issue(s) in question, the VR Area Supervisor or designee must render a decision and communicate that decision in writing **within three business days** to the consumer, consumer's representative, and VR Counselor. The decision rendered may uphold the counselor's determination, reverse it, or propose an alternative action, if an alternative action is possible that will satisfactorily resolve the consumer's concern(s) within the limits allowed under VR policy or a permissible policy exception.

### 4. VR Policy Exceptions

Alternative resolutions proposed by the Area Supervisor or designee may include setting aside VR policies and procedures in certain situations, provided that the exception to policy:

A. would not violate any federal or state statute, regulation, or rule for which VR compliance is mandatory;

B. would effectively resolve the consumer's concerns in full;

C. is understood to be granted as a one-time exception to meet the vocational rehabilitation needs of the individual consumer and not to establish a broad or ongoing precedent for the consumer or others; and

D. has received prior approval from the Director of the Bureau of Rehabilitation Services (BRS) or a designee.

## 5. Limitations of Informal Supervisory Review

An informal supervisory review is in addition to, and separate from, the formal appeal proceeding, and is entirely voluntary on the part of the consumer or consumer's representative. An informal supervisory review cannot be required, substituted in lieu of, or used to deny or delay the right of a consumer to initiate formal appeal proceedings, as described elsewhere in this chapter. The consumer may request mediation, an impartial due process hearing, or both at any time during his or her vocational rehabilitation program, and with or without prior supervisory review. Consumers disputing any determination or action of VR must be advised to request and initiate formal appeal proceedings immediately, and mediation and an impartial due process hearing must be scheduled. Once requested and scheduled, mediation and the impartial due process hearing must occur as scheduled, unless all concerns of the consumer are first resolved to his or her satisfaction by an informal supervisory review or the consumer otherwise withdraws the appeal request.

## 6. Documentation Requirements

All dissatisfaction and concerns expressed by the consumer and all informal resolution efforts employed must be documented in the consumer's [record of services](#) as to the nature of the dissatisfaction and concerns, the efforts undertaken to resolve them, and the outcomes of the efforts.

[AUTHORITY: Federal regulations, 34 CFR 361.57(c); state agency policy]

## **320-03. Basic Right of Appeal**

Any applicant or eligible individual who is dissatisfied with any determination made or action taken by VR with respect to the vocational

rehabilitation services they receive may request a timely review of that determination or action through the formal appeal process and informal review procedures described in this chapter.

[AUTHORITY: Federal regulations, 34 CFR 361.57(a)]

### **320-04. Matters Subject to Appeal**

VR is empowered with authority for making all decisions regarding each consumer's eligibility for VR services, the nature and scope of available VR services, the particular services needed by each consumer and provided, and the authorization of VR funds to secure the needed services. These responsibilities cannot be delegated to any other individual or agency; however, the consumer has the right to request a timely review of any determination made or action taken by VR with which they are dissatisfied, including, but not limited to:

A. any determination that the consumer is ineligible or no longer eligible for VR services, and any decision to close the consumer's record of services;

B. (if VR is operating under an [order of selection \(OOS\)](#) procedure as described in PPM chapter 430), the [priority category](#) to which the consumer is assigned;

C. any modification, suspension, or termination of VR services in progress, except as allowed by the conditions and criteria for service provision described in VR policy, in the consumer's [individualized plan for employment \(IPE\)](#), or with the prior agreement of the consumer or consumer's representative;

D. any dissatisfaction with regard to any provision of the consumer's IPE, especially, but not limited to, disagreements with regard to

- the employment outcome to be pursued,

- the work setting of the employment outcome,
- denial of any specific service required for the individual to achieve an agreed-upon employment outcome,
- the service providers to be utilized,
- the method or manner of service provision, or
- the setting in which the services are provided;

E. the quality or timeliness of any VR service received; and

F. any decision made by VR affecting services that is contrary to the [Rehabilitation Act of 1973](#), as amended, its implementing [federal regulations](#), other applicable federal law and federal [Policy Directives \(PDs\)](#) of the [Rehabilitation Services Administration \(RSA\)](#), state statute or promulgated rules, the [State Plan for VR](#), or the provisions of agency policy described in this Policy and Procedure Manual (PPM).

[AUTHORITY: Federal regulations, 34 CFR 361.13(c); 361.36(e); 361.57(a) and (b)(5)]

## **320-05. Matters Not Subject to Appeal**

### **1. Determinations and Actions of Service Providers**

VR will advocate for the rights and benefits of people with disabilities; however, VR has no authority to waive or change the policies, determinations, or actions of other public or private entities, including, but not limited to, service and [comparable services and benefits](#) providers, and will not entertain requests to pursue mediation or impartial due process hearings concerning third parties. In all such cases, the consumer must be advised to seek appropriate remedies with the provider, or through legal action.



## 2. Requests to Change Local VR Office or VR Counselor Assignments

A. The assignment of a consumer's case to a local VR office and VR Counselor is an administrative determination made based on the proximity of the office location to the consumer, counselor specialties, workload distribution, and other program management considerations. Consumers are not permitted to choose a particular VR Counselor.

B. Consumers specifically dissatisfied with their assigned VR office or counselor may request reassignment by communicating their request to the Area Supervisor. All such requests must be made in writing and documented in the consumer's record of services.

C. Whether to grant or deny a request for reassignment will be decided by the Area Supervisor, in consultation with the appropriate [Region Manager \(RM\)](#) and the [Director of Field Services \(DFS\)](#) on an individualized basis and after consideration of the reason for the request and the circumstances involved, the availability of suitable alternatives, VR costs involved, and the probability that reassignment will satisfactorily resolve the concerns expressed by the consumer. Any decision by the Area Supervisor to deny the request for office or counselor reassignment may thereafter be reviewed through formal appeal proceedings at the consumer's request.

[AUTHORITY: State agency policy]

### **320-06. Steps of the Formal Appeal Process**

The formal appeal process includes four steps. The appeal of an individual consumer may include some or all of:

1. mediation conducted by a [qualified and impartial mediator](#), if requested by the consumer and agreed to by VR;

2. an impartial due process hearing (with or without prior mediation) conducted by an [impartial hearing officer \(IHO\)](#);
3. if requested by either party dissatisfied with the outcome of the impartial due process hearing, an administrative review, conducted by the Director of the [Division of Disability and Rehabilitative Services \(DDRS\)](#) or his or her designee, of the decision rendered by the IHO; and
4. if either party disagrees with the final decision rendered by the administrative review, civil action before a state court or federal district court having competent jurisdiction.

[AUTHORITY: Federal regulations, 34 CFR 361.57(d), (e), (g), and (i)]

### **320-07. Costs of Appeal Proceedings**

The costs of mediation, impartial due process hearings, and administrative reviews, including, but not limited to, compensation of mediators and IHOs and the costs of disability-related accommodations and supports required by any of the participants, are paid for by VR, except that VR is not required to pay for any costs related to the representation of any consumer, including the costs of legal counsel, or any costs incurred by other representatives, advocates, or witnesses, such as transportation or compensation for the loss of wages to appear.

[AUTHORITY: Federal regulations, 34 CFR 361.57(d), (e), (g), and (i)]

### **320-08. Continuity of Services During Appeal Proceedings**

VR cannot reduce, suspend, or terminate disputed VR services currently being provided to a consumer and in progress (including evaluation and assessment services or IPE development), unless reduction, suspension, or termination has been upheld by final resolution reached through mediation, an impartial due process hearing, or an administrative review, unless:

A. the consumer or the consumer's representative requests the suspension, reduction, or termination of services; or

B. VR has evidence that the services have been obtained through misrepresentation, fraud, collusion, or criminal conduct on the part of the consumer or the consumer's representative.

[AUTHORITY: Federal regulations, 34 CFR 361.57(b)(4)]

### **320-09. Accessibility and Accommodations**

Each step of the formal appeal process must be scheduled and conducted in a timely manner and at dates, times, and locations available and accessible to the parties to the process. If a consumer requires disability-related accommodations or other supports to participate effectively, the consumer must notify the VR Area Supervisor and the assigned mediator or IHO of his or her needs at least **five business days prior to the scheduled proceeding**. If the proceeding must be rescheduled in order to secure the accommodations or supports required, the mediator or hearing officer must notify all parties of the rescheduled date, time, and location at least **24 hours prior to the time originally scheduled**. The proceeding should be rescheduled for the earliest possible date.

[AUTHORITY: State agency policy]

### **320-10. Notification Requirements**

Every applicant and eligible consumer must receive notification of his or her right to request review of determinations made and actions taken by VR that affect the VR services they are provided.

#### **1. Form and Content of Notification**

The required notification must be provided in writing, supplemented (if applicable for the consumer or the consumer's representative) by appropriate modes of communication, and must include notice of:

- A. the means for informal dispute resolution established by VR, as described in section 320-02 of this chapter;
- B. the right to request mediation, as described in section 320-13;
- C. the right to request and receive review of VR determinations affecting the provision of vocational rehabilitation services through an impartial due process hearing, as described in section 320-14;
- D. the persons with whom requests for mediation and due process hearings must be filed, in accordance with section 320-11;
- E. the manner in which mediators and impartial hearing officers are assigned by VR, consistent with the policies described in sections 320-13.8 and 320-14.7; and
- F. the availability of the [client assistance program \(CAP\)](#) to assist the consumer during mediation sessions and impartial due process hearings.

## 2. Notification Points

Notification regarding the consumer's right to seek resolution of any matter with which he or she is dissatisfied with respect to the provision of VR services must be provided to the consumer and the consumer's representative at the following times.

### A. Application

At the time of application, the VR Counselor must give the consumer a copy of the VR handbook, *The Road to Work*, which includes information concerning the consumer's appeal rights. The counselor must review this section in person with the consumer, and all subsequent notifications should reference the handbook material and initial discussion.

B. Any determination of ineligibility

When the counselor, or any other individual employed by VR determines that the consumer is ineligible or no longer eligible for services, the employee must provide written notification to the consumer or the consumer's representative explaining the right to appeal the determination and describing the required appeal procedures.

C. Priority for Services Determination

If VR is operating under an OOS procedure, the consumer must be notified of the priority for services category to which he or she has been assigned, the basis for the assignment, and the right to appeal the assignment.

D. IPE Development and Amendment

At the time of initial IPE development and any subsequent IPE amendment, the consumer must be notified of the right to appeal any VR decision regarding the plan or its provisions.

E. Modification, suspension, or termination of VR services

The consumer must be notified of his or her appeal rights when the VR Counselor makes any decision to substantially modify, suspend, or terminate any planned service.

F. Closure of the Record of Services

Notification of appeal rights and procedures must be provided to the consumer or the consumer's representative when the VR Counselor makes a decision to close the individual's record of services.

## G. Upon Consumer Request

Information regarding appeal rights and procedures must be provided at any other time the consumer or his or her representative expresses a desire to initiate an appeal or requests such information or when the VR Counselor determines that notification is appropriate.

### 3. Documentation of Notifications

Each required notification must be documented in the consumer's record of services as to its having been provided.

[AUTHORITY: Federal regulations, 34 CFR 361.57(a)]

## **320-11. Initiating a Request for Review**

### 1. Form of the Request

A request for review must be initiated by a consumer who is an applicant or eligible individual, or by another individual acting on behalf of the consumer as his or her [authorized representative](#), by the submission of a [Request for Review](#) form.

### 2. Obtaining Request for Review Forms

Request for Review forms may be obtained from the local VR office or online on the VR website, under "VR Forms."

### 3. Required Content

The consumer's portion of the completed Request for Review form must include:

- A. the consumer's full name;
- B. the consumer's mailing address;

C. the consumer's primary telephone number and other contact information, as applicable (e.g., secondary telephone number, and e-mail address);

D. if applicable, the name, mailing address, and contact information of the consumer's representative;

E. (preprinted) a request for an impartial due process hearing, as described in section 320-14 of this chapter;

F. a description of the VR determination(s) or action(s) for which review is being requested;

G. (preprinted) a notification of CAP availability;

H. an indication of whether or not the consumer requests mediation prior to an impartial due process hearing, as described in section 320-13 of this chapter;

I. an indication of whether or not the consumer intends to be represented by counsel or other advocate(s) during any mediation and/or due process hearing; and

J. the dated signature of the consumer and/or the consumer's representative.

#### 4. Assistance for Completing Requests

The consumer may complete his or her portion of the request form independently, with the assistance of the VR Counselor or other qualified VR employee, with the assistance of a CAP representative, or with any other representative or advocate of the consumer's informed choice.

## 5. Timeliness and Submission of Requests

The Request for Review form, with the consumer's portion of the form completed, must be submitted to the local VR office **within 15 business days of the consumer's first notification of the determination or action for which review is being requested.** Requests received more than 15 business days after the consumer's first having been informed of the determination or action to be reviewed will not be accepted, unless extenuating circumstances (such as a death in the immediate family, the consumer's hospitalization, or other comparably serious incident) have occurred and been documented.

[AUTHORITY: Federal regulations, 34 CFR 361.57(a); Indiana Code, I.C. 4-21.5-3-(3)(A); State agency policy]

## 320-12. Processing of Requests

### 1. Local VR Office Responsibilities

The local VR office must date stamp the Request for Review form as of the date received, assure that the review form submitted is completed as to all required consumer information, and determine that the completed request meets the 15-business-day timeliness requirement described in section 320-11.5 of this chapter, complete the local VR office portion of the form, and submit it to VR **Central Support Services (CSS) not more than three business days following receipt.** The local VR office information required includes:

- A. the appeal tracking number assigned to assure timely processing, accurate monitoring, and documentation of the appeal;
- B. the name, office address, office telephone number, fax, and other contact information of the assigned VR Counselor;
- C. acknowledgment that the consumer information provided is complete and accurate, and that the request has been made within 15



business days of the consumer's first notification of the determination or action for which the review is being requested;

D. (if mediation has been requested by the consumer) an indication of whether or not the VR office agrees to mediate; and

E. the dated signature of the Area Supervisor (or designee) of the local VR office, and any other signature required by policy.

## 2. CSS Responsibilities

Upon receipt of the Request for Review form, CSS must date stamp the form as of the date received and complete the processing of the request **within three business days**, including:

A. assigning and notifying a [qualified and impartial mediator](#), if the consumer has requested and the local VR office has agreed to mediate; and

B. assigning an [impartial hearing officer \(IHO\)](#) and notifying the IHO assigned that the consumer has requested an impartial due process hearing.

## 3. Mediator and Hearing Officer Responsibilities

The assigned mediator and impartial hearing officer, as appropriate, must schedule mediation and the impartial due process hearing, and must notify all parties of the dates, times, and places scheduled for the mediation and hearing. Scheduling must take into account the availability of the parties and the mediator and hearing officer; however:

A. the impartial due process hearing **must be so scheduled as to occur within 60 calendar days of the date that the Request for Review form was received** by CSS, unless informal resolution or a mediation agreement is achieved prior to the sixtieth day or the parties agree to an extension of specified duration; and

B. mediation, if requested and agreed to, **must occur prior to the date scheduled for the hearing.**

[AUTHORITY: Federal regulations, 34 CFR 361.57(c), (d)(2)(ii), and (e)(1);  
Indiana Code, I.C. 4-21.5-3-7(3)(A)]

### **320-13. Mediation Provisions**

#### **1. Purpose of Mediation**

Mediation is intended to allow the parties to a dispute to resolve issues through discussion and negotiation under the guidance of a qualified and impartial mediator.

#### **2. Requests for Mediation**

A consumer requests mediation by indicating his or her desire to mediate on the Request for Review form at the same time a request is made for an impartial due process hearing (see section 320-11.3 of this chapter).

#### **3. Participants in Mediation Sessions**

Mediation must be conducted by a qualified and impartial mediator with the participation of the consumer, the VR counselor, and other participants designated by the consumer and VR.

#### **4. Right of the Parties to Representation**

The consumer has the right to representation by legal counsel or any other advocate of his or her informed choice during mediation sessions, including, but not limited to, a CAP representative. Consumers who intend to have the assistance of legal counsel or other representation must provide written notice of their intent, either by indicating their intent as required on the Request for Review form (see section 320-11.3 of this chapter) or other written notice of intent to the Director of the Bureau of Rehabilitation Services (BRS) **at least five business days prior** to the scheduled mediation session. The assigned mediator can

reschedule mediation, if necessary to satisfy the requirements of this paragraph.

## 5. Voluntary Participation of the Parties

A. Mediation is voluntary for both parties, and cannot occur unless requested by the consumer or consumer's representative and agreed to by VR. If mediation is requested by the consumer but not agreed to by VR, the parties must proceed directly to the impartial due process hearing phase of the appeal, as scheduled. Once initiated, mediation can be terminated at any time by either party, or by the mediator.

B. Any decision by the local VR office to decline requested mediation must be approved by the appropriate Region Manager.

## 6. Limitations of Mediation

Mediation cannot be used in lieu of an impartial due process hearing requested by the consumer, or to deny or delay the hearing.

## 7. Qualifications for Mediators

All qualified and impartial mediators must be attorneys in good standing with the Indiana Supreme Court who:

A. have completed at least 40 hours of certified civil mediation training; and

B. have met all other qualifications required under the definition for qualified and impartial mediator, as described in PPM chapter 200.

## 8. Assignment of Mediators

The individual mediator assigned to conduct each mediation is selected by VR on a random basis from a list of qualified and impartial mediators

and in accordance with VR procedures that assure the mediator's neutrality. Consumers are not permitted to choose a particular mediator.

## 9. Scheduling of Mediation Sessions

Mediation sessions must be scheduled by the assigned mediator at dates, times, and locations available and accessible to the parties, per section 320-09 of this chapter. The mediator must communicate the date, time, and place of mediation and any rescheduled date, time and place, together with other necessary instructions and information, in writing to the consumer or the consumer's representative, the VR Area Supervisor, Central Support Services, and any other parties directly involved in writing. All such notifications must be made as far in advance of mediation as possible, and must occur prior to the scheduled impartial due process hearing in a manner that allows for the timely conduct of the hearing in accordance with the requirements of section 320-14.9 of this chapter.

## 10. Role of the Mediator

The role of the mediator is to help all parties understand relevant issues, identify common ground, and explore settlement alternatives. The mediator does not have decision-making authority, and has no power to impose any resolution on the parties.

## 11. Conduct of Mediation Sessions

All mediation sessions are subject to all of the provisions described in this chapter. During mediation sessions, the parties must be accorded an opportunity to submit evidence and other information supporting their positions.

## 12. Confidentiality of Mediation Discussions

Discussions that occur during mediation are confidential and cannot be used as evidence in any subsequent due process hearing or civil action.

The parties to the mediation process will be required to sign a confidentiality pledge prior to beginning mediation, and the pledge must be incorporated into any written mediation agreement resulting from the mediation, as described in paragraph 14 of this section.

### 13. Outcome of Mediation

Mediation may result in agreement as to all disputed issues, agreement as to some, but not all, disputed issues, or no agreement as to any of the disputed issues.

### 14. Mediation Agreement

The outcome achieved must be set forth in a written mediation agreement developed by the parties with the assistance of the mediator and signed by the parties and mediator. The written agreement must document the mediation with respect to the dates, times, and locations of mediation sessions, participants, each concern addressed, and the specific outcome achieved as to each concern, and must be signed by the parties.

### 15. Documentation Requirements

Copies of the mediation agreement must be provided to both parties, and must be incorporated into the consumer's record of services and retained in the consumer's CSS appeal file.

### 16. Subsequent Action

A. Full agreement. If full agreement has been achieved, the mediation agreement is the final resolution of all disputed issues, and must be implemented. The mediator must then inform the VR CSS that the dispute has been resolved as to all points, and CSS must so notify the impartial hearing officer assigned to conduct the impartial due process hearing. The IHO must then cancel the scheduled hearing and notify the parties of the cancellation.

B. Partial or no agreement. If agreement as to only some or no agreement has been achieved, any partial agreement is the final resolution as to any agreed-upon points and must be implemented, and the appeal process then proceeds to the impartial due process hearing for resolution of any outstanding issues yet left unresolved.

[AUTHORITY: Federal regulations, 34 CFR 361.5(b)(43) 361.57(b)(3) and (d); 370.1 and 370.4(a)(3); Indiana Code, I.C. 4-21.5-3.5-15; Rule 2.5, Indiana Supreme Court Rules for Alternative Dispute Resolution; state agency policy]

## **320-14. Impartial Due Process Hearing Provisions**

### **1. Purpose of an Impartial Due Process Hearing**

An impartial due process hearing is conducted in order to resolve a dispute regarding any determination by VR affecting the consumer's VR services, unless informal resolution or a mediation agreement is achieved prior to the scheduled hearing as to all disputed issues.

### **2. Requests for Hearings**

An impartial due process hearing must be requested by a consumer who is an applicant or eligible individual, or by his or her authorized representative. All such requests must be in writing, using the Request for Review form described in section 320-11 of this chapter.

### **3. Participants in Hearings**

Impartial due process hearings must be conducted by an impartial hearing officer with the participation of the consumer, the VR Counselor, and other participants designated by the consumer and VR.

### **4. Right of the Parties to Representation**

The consumer has the right to representation by legal counsel or any other advocate of his or her informed choice during an impartial due process hearing, including, but not limited to, a CAP representative.

Consumers who intend to have the assistance of legal counsel or other representation must provide written notice of their intent, either by indicating their intent as required on the Request for Review form (see section 320-11.3 of this chapter) or by providing other written notice of intent to the Director of the Bureau of Rehabilitation Services (BRS) **at least five business days prior** to the scheduled hearing. The assigned hearing officer can reschedule the hearing if necessary to satisfy the requirements of this paragraph.

## 5. Right to Present and Examine Witnesses

In addition to the right of the parties to representation, the parties to the hearing must be given an opportunity to present and examine witnesses, testimony, and other relevant evidence and information.

## 6. Qualifications for IHOs

All impartial hearing officers (IHOs) are selected in consultation with the Commission on Rehabilitation Services and must meet all qualifications required by the federal definition for “impartial hearing officer” described in PPM chapter 200. The same individual may serve as both a qualified and impartial mediator and an impartial hearing officer for VR, but cannot be assigned as both for the same dispute.

## 7. Assignment of IHOs

The individual hearing officer assigned to conduct the impartial due process hearing is selected by VR on a random basis from a list of IHOs maintained by VR and in accordance with VR procedures to assure the neutrality of the IHO selected. Consumers are not permitted to choose a particular IHO.

## 8. Role of the IHO

The role of the impartial hearing officer is to make a decision to uphold or overturn the determination or action being reviewed, based on a

determination of whether or not the determination or action was consistent with applicable provisions of the Rehabilitation Act, implementing federal regulations, federal policy directives, state statute and regulation, the VR State Plan, and state agency policy. The decision made by the IHO must be based on the testimony and evidence presented. The IHO is not permitted to overturn a counselor's determination without demonstrating that it is contrary to law, policy, or the State Plan, and is not authorized to re-decide the determination made by substituting his or her own interpretation for that of the VR Counselor.

## 9. Scheduling of Hearings

Impartial due process hearings must be scheduled by the assigned hearing officer at dates, times, and locations available and accessible to the parties, consistent with the requirements of section 320-09 of this chapter. The IHO must communicate the date, time, and place of the hearing and any rescheduled date, time and place, together with other necessary instructions and information, in writing to the consumer or the consumer's representative, the VR Area Supervisor, Central Support Services, and any other parties directly involved in writing. All such notifications must be made as far in advance of the hearing as possible. The hearing must be scheduled so as to occur **not later than 60 business days of the date on which the Request for Review form requesting the hearing was received by CSS**, unless informal resolution or a mediation agreement is achieved prior to the sixtieth day or the parties agree to an extension of specified duration.

## 10. Conduct of Hearings

All impartial due process hearings are subject to all of the provisions described in this section.



## 11. Outcome of the Hearing

The impartial due process hearing may result in the determination or action of VR being upheld or overturned, based upon the hearing officer's decision as to whether or not VR's determination or action was consistent with applicable provisions of the Rehabilitation Act, implementing federal regulations, federal policy directives, state statute and regulation, the VR State Plan, and state agency policy.

## 12. Written Findings and Decision

The IHO must provide to the individual or the individual's representative and VR a full written report of the findings and the grounds for the decision **within 30 calendar days of the completion of the hearing**. The hearing officer's decision is final, and must be implemented, unless either party requests an administrative review under section 320-15 of this chapter. The report must notify the parties that they may request an administrative review of the decision, by the Director DDRS, and the requirements for making the request.

## 13. Documentation Requirements

Copies of the hearing officer's written findings and decision must be provided to both parties. A copy must be incorporated into the consumer's record of services, and a copy must also be included in the consumer's CSS appeal file.

## 14. Subsequent Action

If dissatisfied with the hearing officer's findings and decision, either party may request an administrative review in accordance with section 320-15 of this chapter.

[AUTHORITY: Federal regulations, 34 CFR 361.5(b)(25); 361.47(a)(11); 361.57(b)(3); 361.57(e) and (f); 34 CFR 370.1 and 370.4(a)(3); Indiana Code, I.C. 4-21.5-3.5-15; Rule 2.5, Indiana Supreme Court Rules for Alternative Dispute Resolution; state agency policy]

## **320-15. Administrative Review of Hearing Officers' Decisions**

### **1. Requests for Administrative Review**

A request for an administrative review of a hearing officer's decision can be made by either party if that party is dissatisfied with the outcome of the impartial due process hearing. Requests can be made by the consumer, the consumer's representative, or by VR. All such requests must be made in writing, addressed to the Director of DDRS or designee.

### **2. Timeliness of Requests**

Requests for administrative review must be received by the office of the DDRS Director **within 20 calendar days of the date on which the hearing officer's decision was mailed to the parties.**

### **3. Conducting Authority**

Administrative reviews must be conducted by the Director of the Division of Disability and Rehabilitative Services (DDRS), or the Director's designee, except that the Director of DDRS cannot delegate the responsibility for conducting any administrative review to any officer or employee of the Bureau of Rehabilitation Services (BRS).

### **4. Conduct of the Review**

The reviewing authority described in paragraph 3 of this section:

A. must provide both parties with an opportunity to submit additional evidence and information relevant to a final decision concerning the matter(s) under review;

B. may not overturn or modify the hearing officer's decision, or any part of that decision, that supports the position of the consumer, unless the reviewing authority concludes, based on clear and convincing

evidence, that the decision of the impartial hearing officer is contrary to the Rehabilitation Act, federal vocational rehabilitation regulations, federal policy directives, the approved VR State Plan, state statute or regulations, or state agency policies consistent with federal requirements; and

C. make an independent, final decision following a review of the entire impartial due process hearing record and any additional evidence and information submitted by the parties.

## 5. Administrative Review Decision

The reviewing authority must set forth his or her decision in writing, including the statutory, regulatory, or policy grounds for the decision, and must provide copies of the written decision to the consumer, the consumer's representative, and VR **within 30 calendar days of the request for administrative review.**

## 6. Documentation Requirements

A copy of the administrative review decision must be provided to both parties, and copies must be incorporated into the consumer's record of services and included in the consumer's CSS appeal file.

## 7. Subsequent Action

The reviewing authority's decision described in paragraph 5 of this section is final, and must be implemented. If a party brings a civil action to challenge the final decision under section 320-16 of this chapter, the decision of the reviewing authority must be implemented pending review by the court.

## **320-16. Civil Action**

Any party who disagrees with the decision of the administrative review under section 320-15 of this chapter may bring a civil action with

respect to the matter(s) in dispute. The action may be brought in any state court or a United States district court of competent jurisdiction without regard to the amount in dispute. The court must be provided with the records related to the impartial due process hearing and the administrative review, may hear additional evidence at the request of either party, and, basing its decision on the preponderance of the evidence, grants whatever relief, if any, that the court determines to be appropriate.